



2024 AMENDMENTS IN BRIEF

In April 2024, the U.S. Sentencing Commission approved amendments to the federal sentencing guidelines. For a more detailed discussion of the policy determinations made by the Commission, please refer to the *Reason for Amendment* in the “Reader-Friendly” and Official Text (link in QR code).

Circuit Conflicts & Miscellaneous

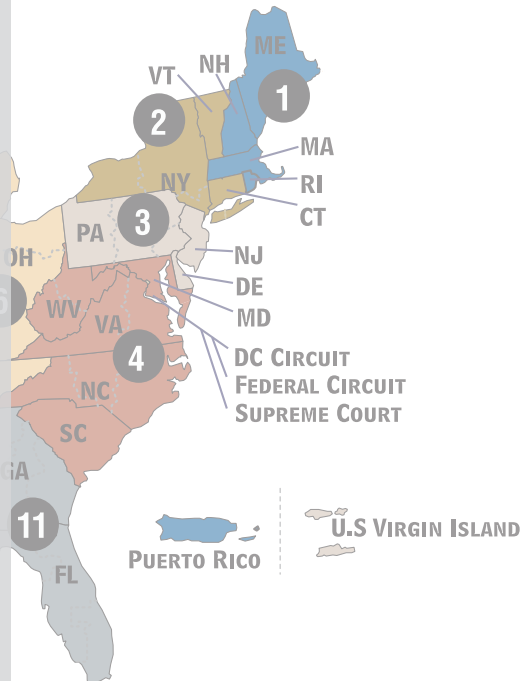
The Commission approved several amendments clarifying guidelines and commentary, addressing circuit conflicts, and providing more complete statutory references.

The **Loss amendment** ensures **uniform application** of the general rule in §2B1.1 establishing loss as the **greater of actual loss or intended loss**.

Among other things, the **Miscellaneous amendment** clarifies when to apply the **enhanced base offense levels at §2D1.1 (Drug Trafficking)** for **death or serious bodily injury**.

The **Circuit Conflicts amendment** resolves a **circuit split** involving application of the 4-level enhancement at §2K2.1(b)(4)(B) for a **serial number of a firearm that is “altered or obliterated.”**

The amendment also **clarifies the §2K2.4 grouping rules** in cases involving **felon-in-possession and drug trafficking convictions** where the defendant was also convicted of Section 924(c).



THE ISSUE

Uniform Guideline Application

Recently, circuit courts have inconsistently applied various provisions of the fraud, drug trafficking, and firearms guidelines—three of the four crime types most frequently sentenced in the federal system.



Scan or click QR code for full Reason for Amendment.

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www.ussc.gov
pubaffairs@ussc.gov
202-502-4500

BACKGROUND & RATIONALE

Rule for Calculating Loss

§2B1.1

In *Stinson v. United States*, 508 U.S. 36, 38 (1993), the Supreme Court held that commentary “that interprets or explains a guideline is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline.” Following *Kisor v. Wilkie*, 139 S. Ct. 2400, 2415 (2019), the Third Circuit held that Application Note 3(A) of the commentary to §2B1.1 is not entitled to deference. The loss calculations for individuals in the Third Circuit are now computed differently than other circuits.

The Commission estimates that prior to the *Banks* decision, approximately 50 individuals per year were sentenced using intended loss in the 3rd Circuit.

The Loss amendment moves the general rule establishing loss from the commentary to the guideline itself. The Commission approved the amendment to resolve the circuit split and ensure consistent loss calculation across circuits. While the Commission may undertake a comprehensive review of §2B1.1 in a future amendment cycle, this amendment aims to ensure consistent guideline application in the meantime without taking a position on how loss may be calculated in future.

Enhancement for Drug Offenses Resulting in Death or Serious Bodily Injury

§2D1.1(a)(1)–(4)

This amendment clarifies that the enhanced base offense levels at §2D1.1(a)(1)–(4) apply based on the offense of conviction under §§ 841(b) or 960(b) for a drug offense resulting in death or serious bodily injury, and not based on relevant conduct.

In fiscal year 2022, 139 individuals received the enhanced base offense levels at §§2D1.1(a)(1)–(4).

The amendment also responds to comments made by the Federal Public and Community Defenders and the Department of Justice that the enhanced penalties should also apply when the parties stipulate to their application.

Altered or Obliterated Firearms Serial Numbers

§2K2.1(b)(4)(B)

This amendment resolves a circuit conflict by amending the 4-level “altered or obliterated serial number” enhancement at §2K2.1(b)(4)(B), to adopt the holdings of the Second and Sixth Circuits. As amended, the enhancement applies if “any firearm had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye.”

The 6th and 7th Circuits have adopted the naked eye test while the 4th, 5th, and 11th Circuits have upheld the enhancement where a serial number is “less legible.”

This amendment is consistent with the Commission’s recognition in 2006 of “both the difficulty in tracing firearms with altered and obliterated serial numbers, and the increased market for these types of weapons.” See USSG, App. C, amend. 691 (effective Nov. 1, 2006). By employing the “unaided eye” test for legibility, the amendment also seeks to resolve the circuit split and ensure uniform application.

Firearms-Related Grouping Rules

§2K2.4, App. Note 4

This amendment aligns with the holdings of the majority of circuits involved in the circuit conflict. Additionally, this amendment clarifies the Commission’s view that promulgation of this Application Note originally was not intended to place any limitations on grouping.

The 6th, 8th, and 11th Circuits have held that such counts can group together under 3D1.2(c) while the 7th Circuit has held that they do not group.